

Thilakavathi. Vs. R.Gopal

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Court : Chennai

Decided On : Jul-31-2012

Judge : G.Rajasuria, J.

Acts : Tamil Nadu Buildings (Lease and Rent Control) Act - Section 10(3)(a)(1), 25, 10(3)(c)

Appeal No. : C.R.P.(NPD).No.2242 of 2012 and M.P.No.1 of 2012

Appellant : Thilakavathi

Respondent : R.Gopal

Advocate for Def. : Mr.Arunkumar Rajan, Adv.

Advocate for Pet/Ap. : Dr.G.Krishna Murthy, Adv.

Judgement :

Civil Revision Petition filed under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act against the order passed in RCA No.799 of 2010 by the learned VII Small Cause Judge, Chennai on 13.03.2012 against in RCOP No.2548 of 2008 by the learned XVI Small Causes Judge, Chennai on 29.07.2010.

ORDER

1. Animadverting upon the order dated 13.03.2012 passed in RCA No.799 of 2010 by the learned VII Small Cause Judge, Chennai, confirming the order dated 29.07.2010 passed in RCOP No.2548 of 2008 by the learned XVI Small Causes Judge, Chennai, this civil revision petition is focussed.

2. A summation and summarisation of the germane facts absolutely necessary for the disposal of this revision would run thus:

(i) The respondent/landlord filed the petition as against the revision petitioner/tenant invoking Section 10(3)(a)(i) of the Tamil Nadu Buildings (Lease and Rent Control) Act, [hereinafter referred to as 'The Act'], for additional accommodation. The matter was resisted.

(ii) During enquiry, the landlord examined himself as P.W.1 and marked Exs.P1 to P5. On the side of the tenant/petitioner, D.W.1 and D.W.2 were examined and Exs.R1 and R2 were marked.

(iii) Ultimately the Rent Controller ordered eviction as against which appeal was filed for nothing, but to be dismissed by the appellate authority confirming the order of eviction passed by the lower authority.

3. Being aggrieved by and dissatisfied with the said order and judgment of the Courts below, the tenant filed this revision on various grounds.

4. The learned counsel for the revision petitioner/tenant placing reliance on the grounds of revision, would put forth and set forth his arguments, which could pithily and precisely be set out thus:

(a) Ex.P4-the medical certificate marked on the side of the landlord, would no way could be held to have been proved, in the absence of the Doctor having been examined.

(b) The landlord's wife who is alleged to be suffering from Osteoarthritis was not examined and that too, when specifically the tenant alleged in the counter that she was in the habit of moving about and also visiting her.

(c) Absolutely there is nothing to indicate and exemplify that there is bonafide on the part of the landlord in seeking eviction.

(d) Pendente lite one Kuper vacated one other portion of the ground floor, but the landlord had chosen to insist upon the tenant to vacate the demised premises out of mala fide intention. Both the authorities have not taken those crucial aspects into account, warranting interference in the revision.

5. Whereas, the learned Senior Counsel for the landlord in a bid to extirpate and torpedo the arguments as put forth and set forth on the side of the tenant, would advance his arguments, which could tersely and briefly be set out thus:

Indubitably and indisputably, the landlord's wife is above 70 years old and there is no lift in the building and she is as revealed by Ex.P4, suffering from Osteoarthritis and hence, she could not claim staircase and it causes her not to go out. Both the authorities taking into account the over all circumstances ordered eviction, warranting no interference in the revision.

6. The points for consideration are as to:

(1) whether in stricto sensu Ex.P4-the medical certificate should have been proved before the Rent Controller, before the Rent Controller placed reliance on the said document for ordering eviction?

(2) Whether both the authorities failed to take into account the ingredients of Section 10(3)(c) of the Tamil Nadu Buildings (Lease and Rent Control) Act?

(3) Whether there is any perversity or illegality in the order passed by the Courts below?

7. The learned counsel for the tenant would cite the decision of the Hon'ble Apex Court reported in CDJ 1981 SC 045 [Bhaichand Ratnshi v. Laxmishanker Tribhoyan], mainly for the purpose of canvassing the point that the Rent Controller legislation is a one intended to protect the interest of the tenant and on invalid grounds, the tenant should not be thrown away; whereas, I would like to fumigate my mind with the following decisions of the Hon'ble Court:

(i) (2001) 8 SUPREME COURT CASES 110 S.R.BABU V. T.K.VASUDEVAN AND OTHERS, certain excerpt from it would run thus:

"10. Sub-Section (8) of Section 11 of the Kerala Buildings (Lease and Rent Control) Act, 1965 (2 of 1965) reads thus:

"11.(8) A landlord who is occupying only a part of a building, may apply to the Rent Control Court for an order directing any tenant occupying the whole or any portion of the remaining part of the building to put the landlord in possession thereof, if he requires additional accommodation for his personal use."

11. A perusal of sub-section (8) makes it clear that to invoke this sub-section the landlord must show that (i) he is occupying only a part of the building; (ii) the tenant is occupying the whole or a portion of the remaining part; and (iii) the landlord requires the additional accommodation for his personal use.

12. The following is the distinction between sub-section (3) and sub-section (8) of Section 11 of the Act. The former provision applies when the building is wholly occupied by the tenant and the landlord bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him provided he does not have any building of his own in his possession in the same city, town or village whereas the latter provision applies when a landlord is already in occupation of a portion of the building and needs additional accommodation which the tenant is occupying, for his personal occupation.

13. In the instant case, admittedly, the first respondent is in occupation of a part of a building and the appellant is occupying another part of the building which the first respondent requires as additional accommodation for his personal use. Therefore, this case falls under sub-section (8) of Section 11 and not under sub-section (3) of Section 11 of the Act.

14. In our view, once it is held that the landlord requires additional accommodation for his personal use, he is entitled to utilise it to best suit his requirement. The condition in which the additional accommodation is to be used by the landlord cannot be dictated by the tenant. The first respondent may use it as it exists or he

may use it after necessary repairs, additions or alterations to suit his requirements. The appellant has no say in such matters."

(ii) 2007(3) CTC 152 RASI SILKS BY ITS PARTNER K.ARUNACHALAM VS. RASI SILKS T.A.VENKATACHALAM, an excerpt from it would run thus:

"12. Holding that the crucial aspect is a special instance in matters arising under Section 1-(3)(c) of the Act and that there should be a categorical finding by the statutory authorities on hardship that may be caused to the Tenant by granting it, will outweigh the advantage to the landlords in K.A.Loganatha Naicker v. S.R.Balasundaram Mudaliar, 1974(2) MLJ 256, it was held thus:

"It is imperative for the authorities in cases arising under Section 10(3)(c) of the Tamil Nadu Act (XVIII of 1960), to give specific finding whether the hardship the tenant is likely to suffer would outweigh the advantage to the landlord or vice versa. Unless this aspect is noticed and adjudged upon by the statutory authorities, there is no complete enquiry as contemplated in respect of the petitions arising under Section 10(3)(c) of the Act."

21. Contention of Tenant is that the landlords can expand the hotel business on the open space available, which is abutting the premises. In his evidence, P.W.1 has stated the open space cannot be utilised for running the hotel. It is well settled that the landlord can choose the portion required and it is not for the Tenants to dictate terms. In Mookkan v. Abdul Rasheeth (deceased) and others, 1999(1) MLJ 233, this Court has held that the landlord can choose the portion required and it is not for the tenant to dictate terms. It is not the object of the provision to weigh the hardship of the Tenant as against the test of the landlord on a delicate scale, giving the benefit of the slight tilt in favour of the tenant."

8. The landlord no doubt for the purpose of invoking Section 10(3)(c) of the Act and also in addition to proving his bona fides, placed before the Court the relative advantage the landlord would be getting and that would outweigh hardship if any to which the tenant would be put into and the tenant being evicted. Here no doubt both the Courts below considered the fact that the said landlord as well as his wife were aged people and there is no lift also available in the said building.

9. Relating to marking of Ex.P4 is concerned, I would like to observe that this is not a case where compensation is claimed based on Ex.P4 and this is not a criminal case also. Summary procedures are being adopted for paying rent control arrears. Ex.P4 is nothing but a piece of additional evidence so as to buttress and fortify the claim of the landlord.

10. Trite, the proposition of law, is that the landlord cannot be compelled to restrict their freedom of enjoyment for the purpose of protecting the tenant. Here no doubt, the concerned lady was not examined before the Court, however her husband detailed and delineated the health condition of his wife and also their requirement and for additional accommodation. P.W.1-the landlord was cross examined also. Over and above that, one cannot expect that the lady also should be examined to fortress the contention of the landlord. The fact remains that the landlord is occupying the first floor of the house for the residential purpose and the tenant also is occupying the portion of the ground floor for residential purpose. As such, for additional accommodation for residential purpose, the landlord requires the premises itself within the parameters of Section 10(3)(c) of the Act. The tenant who is stated to be a Government servant could very well on being evicted occupy some other premises under the tenancy. Meanwhile, the aged landlord with his wife could occupy the same premises and they will not be under the bounden duty to claim the staircase often and that benefit would certainly outweigh the hardship, if any, to which the tenant would be put into on she being evicted from the demised premises.

11. The learned counsel for the tenant, would also submit before this Court that the tenant's daughter is doing B.P.T. and naturally, if holus bolus the tenant is directed to vacate the premises, her daughter's education would be in doldrums. As such we have to strike a balance between the two. But one fact is clear that there is nothing to indicate that the requirement of the landlord for him as well as his wife convenient accommodation he requires the demised premises by way of additional accommodation. In such a case, I could see no perversity or illegality in the orders passed by both the courts below and in the meanwhile, in order to protect the interest of the tenantm sufficient time could be granted for vacating the premises. Accordingly, while dismissing the revision petition, I would like to grant

nine months' time for vacating the premises subject to payment of rent regularly till the tenant vacates. An affidavit shall be filed to that effect within a period of fifteen days from this date.

Accordingly, this civil revision petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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